

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of:)	
)	
ReconRobotics, Inc.,)	
	)	WP Docket No. 08-63
Request for Waiver of Part 90 of the)	
Commission's Rules for a Video and Audio)	
Surveillance System at 430-450 MHz.)	

REPLY TO OPPOSITION TO MOTION TO SET ASIDE

COMES NOW movant, JAMES EDWIN WHEDBEE, and for his reply to the ReconRobotics, Inc. ("ReconRobotics") opposition ("Opposition") to Movant's motion to set aside ("Motion") states as follows...

[1] To avoid the need for lengthy suggestions in support of the Motion and against the Opposition, the movant takes the Opposition in more or less reverse order to prove the Motion must be sustained and the Opposition dismissed.

[2] In paragraph D of ReconRobotics' Opposition, ReconRobotics relies on both the 'waiver' and Sections 2.106 (Footnote US217) and 90.103(b) in support of both its waiver and its Opposition to the Movant's Motion (47 CFR Sections 2.106 and 90.103(b)). Quoting these regulations should better inform these pleadings and direct the Commission's actions...

"47 CFR SECTION 2.106 FOOTNOTE US217...

US217 In the band 420–450 MHz, **pulse-ranging radiolocation** systems may be authorized for use along the shoreline of the conterminous United States and Alaska. In the sub-band 420–435 MHz, **spread spectrum radiolocation** systems may be authorized within the conterminous United States and Alaska. All stations operating in accordance with this provision shall be secondary to stations operating in accordance with the Table of Frequency Allocations. Authorizations shall be granted on a case-by-case basis; however, operations proposed to be located within the following geographic areas should not expect to be accommodated:

(a) Arizona, Florida, and New Mexico.

(b) Those portions of California and Nevada that are south of latitude 37°10' N.

(c) That portion of Texas that is west of longitude 104° W.

(d) Within 322 km (200 miles) of Eglin AFB, FL (30°30' N, 86°30' W); Patrick AFB, FL (28°21' N, 80°43' W); and the Pacific Missile Test Center, Point Mugu, CA (34°09' N, 119°11' W).

(e) Within 240 km (150 miles) of Beale AFB, CA (39°08' N, 121°26' W).

(f) Within 200 km (124 miles) of Goodfellow AFB, TX (31°25' N, 100°24' W) and Robins AFB, GA (32°38' N, 83°35' W).

(g) Within 160 km (100 miles) of Clear, AK (64°17' N, 149°10' W); Concrete, ND (48°43' N, 97°54' W); and Otis AFB, MA (41°45' N, 70°32' W).

47 CFR SECTION 90.103(b)-TABLE...

(b) Frequencies available. The following table indicates frequencies available for assignment to stations in the **Radiolocation Service**, together with the class of station(s) to which they are normally assigned, and the specific assignment limitations, which are explained in paragraph (c) of this section:

Radiolocation Service Frequency Table		
Frequency or band	Class of station(s)	Limitation
Kilohertz		
70 to 90.....	Radiolocation land or mobile.	1
90 to 110.....	Radiolocation land....	2
110 to 130.....	Radiolocation land or mobile.	1
1705 to 1715.....	.....do.....	4, 5, 6
1715 to 1750.....	.....do.....	5, 6
1750 to 1800.....	.....do.....	5, 6
1900 to 1950.....	.....do.....	6, 25, 26, 27, and 30
1950 to 2000.....	.....do.....	6, 25, 27, and 30
3230 to 3400.....	.....do.....	6, 8
Megahertz		
420 to 450.....	.....do.....	21
2450 to 2500.....	.....do.....	9, 22, 23
2900 to 3100.....	.....do.....	10, 11
3100 to 3300.....	.....do.....	12
3300 to 3500.....	.....do.....	12, 13
3500 to 3650.....	.....do.....	12
5250 to 5350.....	.....do.....	12
5350 to 5460.....	.....do.....	10, 14
5460 to 5470.....	.....do.....	10, 15
5470 to 5600.....	.....do.....	10, 11
5600 to 5650.....	.....do.....	10, 16
8500 to 9000.....	.....do.....	12, 17
9000 to 9200.....	.....do.....	10, 14
9200 to 9300.....	.....do.....	12
9300 to 9500.....	.....do.....	10, 15, 18
9500 to 10,000.....	.....do.....	12
10,000 to 10,500.....	.....do.....	12, 13, 19
10,500 to 10,550.....	.....do.....	20, 22, 24
13,400 to 13,750.....	.....do.....	12
13,750 to 14,000.....	.....do.....	31
15,700 to 17,300.....	.....do.....	
24,050 to 24,250.....	.....do.....	12, 22, 24
33,400 to 36,000.....	.....do.....	12

(21) Non-Government **radiolocation** stations in the band are secondary to the Government Radiolocation Service, the Amateur Radio Service and the Amateur-Satellite Service. **Pulse-ranging** radiolocation stations in this band may be authorized along the shorelines of Alaska and the contiguous 48 states. Radiolocation stations using **spread spectrum techniques** may be authorized in the band 420-435 MHz for operation within the contiguous 48 states and Alaska. Also, stations using spread spectrum techniques shall be limited to a maximum output power of 50

watts, shall be subject to the applicable technical standards in Sec. 90.209 until such time as more definitive standards are adopted by the Commission and shall identify in accordance with Sec. 90.425(c)(2). Authorizations will be granted on a case-by-case basis; however, operations proposed to be located within the zones set forth in footnote US217, Sec. 2.106 of this chapter should not expect to be accommodated."

Hereinabove, Movant intentionally bolded (the type face of) the applicable provisions of these regulations. Footnote US217 to Section 2.106 as well as Footnote 21 in the Table under Section 90.103(b) calls for the use of Radionavigation stations (**ULS radio service code "RS"**). No mention is made of the public safety radio service (**ULS radio service code "PW"**) anywhere in either of these two regulations which ReconRobotics continues to cite throughout its erroneous pleadings. The emissions are also specified in these regulations: pulsed or spread spectrum. ITU Radio Rules and Regulations specify that the emission designator for pulsed emissions must begin with the letters P, K, L, M, Q, or V and specify that the emission designator for spread spectrum emission must begin with the letter X.

Movant notes that ReconRobotics' transmitters employ emission designator C3F, which starts with the letter C (and not P, K, L, M, Q, V, or X), which is amplitude modulated vestigial side-banded video, and not pulsed or spread spectrum emissions. In both the instance of the type of emission as well as the radio service, the 'waiver' and ReconRobotics' pleadings in Opposition are clearly and unmistakably erroneous in their reliance on existing regulation – the regulations **MUST** be amended in order to accommodate the transmitters of ReconRobotics; therefore, the Commission could not grant a 'waiver' or, if it intended doing so, it would nevertheless have to amend the rules and regulations to do so. In either event, the application for waiver of ReconRobotics should have properly been construed by the Commission as a Petition for Rulemaking, denominated and redesignated by the Commission as a Petition for Rulemaking despite how it might otherwise have been worded, and dealt with in accordance with 47 CFR Section 1.411 as for all rulemaking proceedings.

[3] In Paragraph C of its Opposition, ReconRobotics suggests waivers are lawful and even required at times. Movant agrees that, in principle, this is the case. Movant instantly believes, however, that the Commission erred by failing to correctly construe the ReconRobotics waiver application as a Petition for Rulemaking; accordingly, Paragraph C is irrelevant puffing of ReconRobotics' arguments.

[4] In Paragraph B of its Opposition, ReconRobotics suggests the movant's Motion ought to be dismissed as repetitious. Movant disagrees: in fact nobody, including the Commission in spite of its duty to do so, has dealt with the issue of construction: that the ReconRobotics 'waiver' application should have and correctly ought to have been construed as and dealt with as a Petition for Rulemaking, for that was its intended effect if granted – for it could not be effectuated otherwise.

[5] In Paragraph A of its Opposition, IF and only if ReconRobotics is correct in that the Commission must construe the Motion to Set Aside as an untimely Petition for Reconsideration, then ReconRobotics also reinforces the movant's point that the Commission had a duty, and failed, to correctly construe the application for waiver filed by ReconRobotics as more accurately a Petition for Rulemaking; however, the Motion to Set Aside need not be construed as a Petition for Reconsideration as Motions to Set Aside are not prohibited anywhere in the Commission's rules and regulations. Notwithstanding the fact that ReconRobotics' Opposition proves the very Motion it intends to defeat, there is nowhere in the Commission's rules and regulations a prohibition against filing of a Motion to Set Aside **at any time** following Commission decisions – the rules and regulations only prohibit the Commission from doing so, sua sponte. In that a Petition for Reconsideration was filed by ARRL, the conclusivity of any Commission order subject to the Petition for Reconsideration is in question, and given that the Commission could sustain the Petition, the Motion to Set Aside is properly interjected at this time unless ARRL objects. ARRL has not objected. Accordingly, given that no time limitation is imposed on a Motion to Set Aside, nor are such Motions explicitly prohibited, the Movant's said

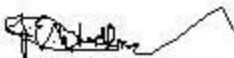
Motion is timely and must be considered.

[6] Movant further notes for the Commission's benefit that ReconRobotics' Opposition does not argue against the statutory substance underlying his Motion to Set Aside: the Administrative Procedures Act, and specifically the provisions which necessitate that the Commission set aside its order granting a 'waiver' and reinstating proceedings as rulemaking proceedings.

[7] Concluding, Movant notes that ReconRobotics does not deny the legal arguments put forth by Movant in the Motion to Set Aside, that ReconRobotics effectively proves the Motion's point, and that the remainder of ReconRobotics' Opposition is either irrelevant or erroneous; accordingly, the Motion to Set Aside must be granted immediately and without further delay.

WHEREFORE, Movant prays the Commission's Order consistent herewith setting aside and vacating its 'waiver' order, construing the application therefor as correctly a petition for rulemaking, and reinstating proceedings consistent with the Commission's established procedures governing petitions for rulemaking (47 CFR Section 1.411), and for such other and further relief as shall be consistent herewith.

Respectfully submitted:



James E. Whedbee, M.Ed.
SBE #26971

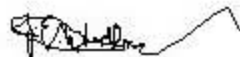
August 20, 2010

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CERTIFICATE OF SERVICE

THIS CERTIFIES that on this 20th day of August, 2010, an exact copy of the within and foregoing motion was e-mailed to parties whose names, addresses, and e-mail addresses follow this certification.

Signed:



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